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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

20 COMES NOW the Plaintiff, UNITED STATES OF AMERICA, by and  
21 through its counsel, Karen P. Hewitt, United States Attorney, and  
22 Carlos Arguello, Assistant United States Attorney, and hereby  
23 files its response and opposition to Defendants' above-referenced  
24 motions. This response is based upon the files and records of  
25 this case, together with the attached statement of facts,  
26 memorandum of points and authorities and the Government's motion  
27 for reciprocal discovery.

I.

### CURRENT CASE STATUS

3 By the time this four-defendant case is heard by the Court on  
4 17, 2007, the parties anticipate the above-referenced defendant to  
5 be the only remaining defendant who has not yet pled guilty before  
6 the magistrate. Counsel for this defendant is David L. Baker.  
7 Mr. Baker is currently out of the country and will not be present  
8 for the upcoming hearing. The Government anticipates that the  
9 parties will request a trial date at the hearing. In the  
10 meantime, Mr. Baker's client will plead guilty before the  
11 magistrate.

II.

## STATEMENT OF FACTS

14 On October 29, 2007, Border Patrol Agents arrested Hector  
15 Peralta-Ramirez ("Defendant") after being identified as a foot  
16 guide who led six undocumented aliens into the United States from  
17 Mexico. Border officials apprehended Defendant after he entered  
18 a 1998 Ford Windstar driven by a co-defendant. The six aliens  
19 were also found in the car.

III.

## POINTS AND AUTHORITIES

## A. DISCOVERY

23 The Government has produced approximately one hundred (100)  
24 pages of discovery. Additional discovery will be produced as it  
25 is available. At this time, the Government is awaiting further  
26 Border Patrol reports, photographs, and evidence seized from  
27 Defendants' vehicles and home which will be provided to Defendants  
28 once they have been received. The discovery produced is in excess

1 of that required by Rule 16 of the Federal Rules of Criminal  
2 Procedure and the Jencks Act (now covered by Rule 26.2 of the  
3 Federal Rules of Criminal Procedure). As to the physical  
4 evidence, the Government will make it available for viewing by  
5 defense counsel at a mutually convenient time and place.

6 As to exculpatory information, the Government is well aware of  
7 its obligation under Brady v. Maryland, 373 U.S. 83 (1963) and  
8 will comply.

9 The Government will provide a list of witnesses in its trial  
10 memorandum. The grand jury transcript of any person who will  
11 testify at trial will also be produced.

12 The Government has provided and will continue to provide  
13 information within its possession or control pertaining to the  
14 prior criminal history of the Defendants. Evidence of other acts  
15 or crimes by the Defendants similar to this drug smuggling  
16 incident will be provided once the information is received. The  
17 Government intends to seek permission to introduce this evidence  
18 under Federal Rule of Evidence 404(b) at trial. The Government  
19 also intends to seek permission to impeach Defendants with their  
20 felony convictions under Federal Rule of Evidence 609(a)(1) if  
21 either testifies at trial.

22 The Government will produce the reports of any experts that it  
23 intends to use in its case-in-chief at trial or are material to  
24 the preparation of the defense.

25 In view of the above-stated position of the Government  
26 concerning discovery, it is respectfully requested that no orders  
27 compelling specific discovery by the Government be made at this  
28 time. The Government also respectfully requests reciprocal

discovery of the Defendants. If and when individual problems arise which cannot be resolved between counsel for Defendants and the Government, the matters can be submitted to the Court for decision.

**5 B. REQUEST TO FILE FURTHER MOTIONS**

6 The Government does not oppose Defendant's request to file  
7 further motions if based on newly obtained discovery.

IV.

**GOVERNMENT'S MOTION FOR RECIPROCAL DISCOVERY**

10 The Government hereby requests Defendants to deliver all  
11 materials to which the Government may be entitled under Federal  
12 Rules of Criminal Procedure 16(b) and 26.2.

13 || v.

14 | CONCLUSION

15 For the foregoing reasons, the Government respectfully  
16 requests that Defendant's motions be denied where opposed and that  
17 the Government's motion for reciprocal discovery be granted.

**18** DATED: December 13, 2007.

19 | Respectfully submitted,

**20** CAROL C. LAM  
United States Attorney

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23 CARLOS ARGUELLO  
Assistant U.S. Attorney

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